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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug 14 2019
BY: ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Monte I. Lieberfarb, M.D.** **641 Meadow Wood Ln.** **Willits, CA 95490** **Physician's and Surgeon's Certificate No. G 57801,** Respondent.	Case No. 800-2017-035864 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 14, 1986, the Medical Board issued Physician's and Surgeon's Certificate Number G 57801 to Monte I. Lieberfarb, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2020, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
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> . . .

7. Section 2266 of the Code provides that the failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of patient services constitutes unprofessional conduct.

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FACTS

8. Respondent practices family medicine and was the primary care provider for patient P-1[1] from approximately July 25, 2008 through June 19, 2013. Respondent treated P-1 for chronic medical conditions, including congestive heart failure. P-1 was homeless during most of the time when Respondent treated him.

9. Respondent prescribed P-1 the following narcotic pain medications for chronic pain from past injuries: Oxycodone,[2] Vicodin,[3] Norco,[4] and Percocet.[5] Respondent regularly prescribed P-1 combinations of two of these medications.

10. Respondent also prescribed P-1 medications for his anxiety and depression, including Ativan[6] and Paxil.[7] Respondent regularly prescribed P-1 combinations of one or both of these medications concurrently with narcotic pain medication.

11. Respondent continued to prescribe these medications to P-1 through the patient's last visit, on June 19, 2013. On June 20, 2013, P-1 committed suicide. His cause of death was acute oxycodone and ethanol toxicity.

12. During Respondent's care of P-1, the patient exhibited factors that placed him at risk of a detrimental outcome from long-term therapy with controlled substances. These risk factors included, among other things:

A. P-1 had a history of methamphetamine abuse.

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[1] The patient is designated in this document as patient P-1 to protect his privacy. Respondent knows the name of the patient and can confirm his identity through discovery.

[2] Oxycodone is an opioid analgesic.

[3] Vicodin, a trade name for hydrocodone bitartrate with acetaminophen, is an opioid analgesic. Vicodin tablets are available in strengths of 300 mg of acetaminophen and between 5 mg and 10 mg of hydrocodone bitartrate.

[4] Norco, a trade name for hydrocodone bitartrate with acetaminophen, is an opioid analgesic. Norco tablets are available in strengths of 325 mg of acetaminophen and between 5 mg and 10 mg of hydrocodone bitartrate.

[5] Percocet, a trade name for oxycodone hydrochloride with acetaminophen, is an opioid analgesic. Percocet tablets are available in strengths of 325 mg of acetaminophen and between 2.5 mg and 10 mg of oxycodone hydrochloride.

[6] Ativan, a trade name for lorazepam, is a benzodiazepine. It is a psychotropic drug used to treat anxiety.

[7] Paxil, a trade name for paroxetine, is a selective serotonin reuptake inhibitor. It is a psychotropic drug used to treat depression and anxiety, among other disorders.

B. P-1 had a history of alcohol abuse, and he continued to struggle with his drinking while Respondent treated him.

C. P-1 reported traumatic brain injury from a past beating.

D. P-1 had a history of being homeless, and he was homeless during much of the time when Respondent treated him.

E. P-1 failed to use the controlled substances that Respondent prescribed to him as directed. For example, at his October 23, 2009 visit, P-1 reported that he was using up to four tablets of Norco per day for his chronic leg pain, although he had been prescribed Norco for use only three times per day. Also, on October 11, 2012, P-1 reported that he had increased his use of Percocet to three tablets at bedtime, although he had been prescribed Percocet for use only two times per day. And on January 23, 2013, P-1 stated that he had been using inordinate amounts of his prescribed Norco, Percocet, and Ativan.

F. P-1 was concurrently being treated for anxiety and depression, and Respondent documented at his January 23, 2013 visit that P-1 "relates to thoughts of suicide and depression."

G. P-1 was prescribed a combination of narcotics and a combination of narcotics and benzodiazepines.

13. These factors placed P-1 at high risk for abuse or misuse of or addiction to controlled substances. Respondent's prescribing and documentation do not reflect that he conducted an adequate assessment of the risks to P-1 from the long-term use of controlled substances, based on these factors.

14. Respondent documented discussing with the patient, during multiple visits, his need to cease drinking alcohol, particularly in combination with his prescribed medications. Respondent also documented warning the patient at his February 6, 2013 visit that he could easily overdose if he continued to drink alcohol while using Ativan. However, Respondent did not document informing P-1 of the fundamental risks of the narcotics and benzodiazepines he prescribed, including combinations thereof.

15. Respondent's prescribing and documentation do not reflect that he adapted his treatment plan based on P-1's response to the prescribed medications, such as increased function or decreased pain. For example, on August 11, 2010, Respondent increased P-1's dose of Norco without documenting a reason for the change. More broadly, between 2010 and 2013, Respondent increased P-1's dosages of narcotics without documenting positive outcomes supporting continued or increased prescribing and despite the risk factors exhibited by P-1 noted above.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts, Inadequate Records)

16. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence), (c) (repeated negligent acts), and/or section 2266 (inadequate records) of the Code in that Respondent was grossly negligent, committed repeated negligent acts, and/or failed to maintain adequate records in the practice of medicine by engaging in the conduct described above, including but not limited to the following:

A. Respondent failed to adequately assess and document the risks to P-1 of long-term use of a combination of narcotics and the risks of combining narcotics with Ativan, a benzodiazepine;

B. Respondent failed to document obtaining informed consent from the patient for his treatment by adequately informing the patient of the risks of these medications; and

C. Respondent did not base his prescribing to P-1 on an ongoing assessment of P-1's response to the medications and failed to tailor his treatment of P-1 based on positive and negative findings.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 57801, issued to Respondent;

2. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED:
April 4, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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